SINGAPORE REPORTS

SOUTH UNION CO. LTD. v. SENG HIN LTD.

[O.C.J. (Winslow J.) May 24, 1972]

[Singapore — Suit No. 1149 of 1968]

Landlord and Tenant — Rent — Death of tenant — Landlord accepting rent remitted by company — Estoppel — Notice to quit served on Chief Justice after issue of grant of probate — Whether valid.

The plaintiffs purchased the premises in question in 1952. They regarded one *OHT* as their tenant and continued so to regard him even after his death, of which they knew nothing till they were so informed on June 23, 1967 by the then solicitors for the defendants. *OHT* died in March 24, 1964 and probate was granted to his widow *TPG* as sole executrix in May, 1964. This fact was unknown to the plaintiffs whose solicitors served their notice to quit of October 25, 1967 on the Honourable Chief Justice in whom they thought the tenancy was vested.

On the evidence of one of the directors of the plaintiff company, it was admitted that although *OHT* was recognised as a tenant, he knew that *OHT* was holding the tenancy as a partner of Chop Seng Hin, who were in occupation although he did not know exactly when Chop Seng Hin became Seng Hin Ltd., the defendants. There was also evidence that the director knew that rent was paid by Chop Seng Hin and later by the defendants by their own cheques under their letter-heads.

Held: (1) in the circumstances of this case the plaintiffs could not succeed on the ground of estoppel which was proved;

(2) as the contractual tenancy of *OHT* on his death passed to his widow, his sole executrix, the notice to quit addressed to the deceased on June 12, 1967 at the premises was bad;

(3) where money is paid, it is to be applied according to the expressed will of the payer and not of the receiver. In this case the cheques for the rent tendered by the defendants were received as rent tendered by them for their tenancy even if the plaintiffs chose on their receipts to resort to prevarication by making the receipts out in the name of *OHT*. Accordingly the plaintiffs' claim must be dismissed.

[Editorial Note: The plaintiffs appealed to the Court of Appeal (Civil Appeal No. 30 of 1972). The Court of Appeal (Wee Chong Jin C.J., Kulasekaram and Tan Ah Tah JJ.) dismissed the appeal on October 2, 1972.]

Cases referred to:-

(1) *Ban Hin Lee Bank Ltd.* v. *Tan Khoo Soei & Ors.* [1963] M.L.J. 275.

(2) *Daeng Mohamadally* v. *Thanapakiam* [1957] M.L.J. 178.

(3) *Hartell* v. *Blackler* [1920] 2 K.B. 167.

(4) *Croft* v. *Lumley* 6 H.L.C. 672.

CIVIL SUIT.

T. C. Cheng (*Miss Patricia Low* with him) for the plaintiffs.

Dato' David Marshall (*Eugene Phoa* with him) for the defendants.

Winslow J.: The plaintiffs purchased the premises No. 53 Market Street in April 1952. They regarded Oh Hoon Tam as their tenant by that name without ever having seen him and continued so to regard him even after his death, of which they knew nothing till they were so informed on 23rd June 1967 by the then solicitors for the defendants. Oh Hoon Tam died on 24th March 1964 and administration was granted to his widow Madam Teo Peck Geok as sole executrix of his will on 8th May 1964 although the actual grant was extracted only on 1st October 1964. Even this fact was unknown to the plaintiffs whose solicitors as is evidenced by their notice to quit of 25th October, 1967 (AB12) served on the Honourable Chief Justice in whom the tenancy was thought to be vested then through ignorance that a grant subsisted.

Mr. Ng Quee Hock, a director of the plaintiff company since 1949, gave evidence for the plaintiffs and Mr. Yap Sim Eng, a director of the defendant company, who had been previously manager of a partnership business, Chop Seng Hin, at the premises since 1945 until 1964 when the partnership ceased and the present defendant company was incorporated and carried on the same business at the same premises, gave evidence for the defendants.

Rent was paid by Oh Hoon Tam out of the partnership funds of Chop Seng Hin as the only active partner of 3 partners and rent receipts were issued to him in his name without objection by the other partners but it seems clear that he was the tenant of the premises as agent of the partnership till his death and that the plaintiffs regarded him all along as their contractual tenant from 1952 when they purchased the premises without vacant possession. Even Mr. Ng admitted that although he recognised Oh as his tenant he knew he was holding the tenancy as a partner of Chop Seng Hin, that he knew that Chop Seng Hin was in occupation and, later, that the defendants were in occupation, although he did not know exactly when Chop Seng Hin became Seng Hin Ltd., to use his own words. He also said that he assumed that Oh Hoon Tam was the agent for the defendants. This evidence coupled with the evidence that he knew that rent was paid by Chop Seng Hin and later by the defendants by their own cheques under their own letter heads makes it conclusive, in my view, that when rents were received by the plaintiffs they knew only too well who their actual tenants in occupation of the premises were at all material times even though it suited their purpose to issue rent receipts sometimes in the name of Chop Seng Hin and most times in the name of Oh Hoon Tam even after his death. As Mr. Ng said, when taxed by counsel for the defendants —

"Q. Why did you take no action after 1964 when Chop Seng Hin became Seng Hin Ltd. and sent you cheques drawn by Seng Hin Ltd.?",

"A. We were trying to be more cautious about the matter because we bought the property without vacant possession and we didn't want to be reckless."

It seems to me that it only dawned on the plaintiffs in 1967 to seek legal advice in the matter after they had slept on whatever rights they thought they might have had knowing as far back as in 1952, only too well, that there was a tenant in occupation of the premises who became their tenant when they acquired the property and whom they could not evict. Some overtures to buy over the tenant since 1952 were said to have been made through a clerk Tan Ah Teow, who died after the issue of the writ herein. Although Mr. Ng said he heard nothing from the defendants about their response to these overtures, Mr. Yap for the defendants denied that anyone from the plaintiffs had ever visited them. Mr. Ng however made a significant observation to the effect that, since the defendants made no reply or just kept quiet, he was compelled to seek legal advice. Tan was alive when the writ was

issued and since the plaintiffs obviously relied entirely on him — e.g. they merely signed whatever receipts for rent in this connection were prepared by him — this clerk must have had some say in the instructions which went out to their solicitors.

It is not surprising to find that the statement of claim in August 1968 refers to the defendants as wrongfully entering *recently* into possession when we now know and Mr. Ng must have known that as early as on 1st August 1964 rent had been tendered at Ex. DD45 by Seng Hin Ltd. (see letter head superimposed at the top of the old letter head of Chop Seng Hin) as "*our* rent" for August 1964. This reference to "recent" trespass in 1968 is a deliberate untruth on somebody's part which has crept into the claim for which the plaintiffs have only themselves to blame. I find it difficult to believe that anyone in the plaintiffs company could have been so naive as to state categorically that the defendants had committed a recent trespass even if any such wrongful entry occurred more than 4 years earlier.

I hold in all the circumstances of this case that, even without reliance on any of the earlier alternative grounds on which the defence have resisted the claim, it cannot possibly succeed on the simple ground of estoppel set out in ground 6 of the defence which I find wholly proved. This is far from saying that the other grounds of defence are not also well-founded.

I have also considered the final submissions on behalf of the plaintiffs.

At the end of his evidence, Mr. Ng suddenly seemed assailed by doubts as to what his correct attitude towards Oh Hoon Tam should be. Having said that he was one of the partners of Chop Seng Hin as he admitted in cross-examination although his original stand in examination-in-chief was complete ignorance of the identity of Oh Hoon Tam apart from his name and complete ignorance of the existence of Chop Seng Hin or Seng Hin Ltd. or anyone in either of these firms, he asked for permission to withdraw his answer. He finally said that he recognised Oh as tenant.

The truth is that Mr. Ng and his company did not know or care who the actual tenant was so long as someone paid the rent. Hence the veil of mystery surrounding the identity of the tenant. One is therefore left merely with the documentary evidence of the rent receipts and the reluctant admissions based, no doubt, on these receipts (and on what the clerk told the plaintiff company) that the plaintiffs knew that rent was being tendered by Chop Seng Hin from 1952 onwards when they became landlords until 1964 when Seng Hin Ltd. did so. Receipts were issued in the name of Oh Hoon Tam because he was the tenant taken over by that name from the former owners. Sometimes rent receipts were issued in the name of Chop Seng Hin. From 1st August 1964 care was taken not to issue receipts in the name of Seng Hin Ltd. although cheques for the rent were made out by the latter. The plaintiffs kept on issuing receipts to Oh Hoon Tam as tenant without knowing or caring whether he was still alive. They continued accepting rent, without investigation of any kind or protest, from Chop Seng Hin and later, from 1st August 1964, from the defendants. Undoubtedly the defendants are a separate legal entity from Chop Seng Hin and from Oh Hoon Tam but it should have been obvious from the name of the defendant company itself that there was an obvious interest maintained in the latter by its predecessors in business at that address. In my judgment, the *Ban Hin Lee Bank*[1] case does not help the plaintiffs, accepting rent for as long as they did from the defendants. We have Mr. Ng's word for it that, at the very least he thought that Oh Hoon Tam was the agent for the defendants in the same way as he quite correctly thought him to be the agent of Chop Seng Hin in his life time. The defendants have quite openly indicated from 1964 to the plaintiffs that they were paying rent for themselves, not for Oh Hoon Tam. It is not as if they were taking advantage of the vacillation on the part of the plaintiffs in the matter by continuing to pay rent surreptitiously in the name of and for Oh Hoon Tam. They did so in their own name and in respect of their own rent due to the plaintiffs who could have been in no doubt about their stand.

If the test of Lord Mansfield is applied (see Chua J. in *Daeng Mohamadally* v. *Thanapakiam*[2] citing Denning L.J.'s judgment at page 178)

"The question therefore is. *quo animo* the rent was received, and what the real intention of both parties was?".

From the facts in the present case I have found that the plaintiffs regarded Oh Hoon Tam as the agent of the defendants. In any case, the contractual tenancy on his death having passed to his widow as sole executrix, the notice to quit addressed to the deceased on 12th June, 1967 at the premises was bad. There was no abandonment of the tenancy as in the case before Chua J.

With regard to the *Ban Hin Lee Bank's* case, it should be noted that Buttrose J. was there concerned with determination of tenancy of a statutory tenant on his death where nothing passed to his estate. There never was any contractual tenancy with that tenant at the time of his death.

I therefore find it difficult to accept the final submissions based on these cases by counsel for the plaintiff that the defendants were trespassers. As I have found, the evidence is entirely the other way. It should also be remembered that in *Hartell* v. *Blackler*[3] reference is made to Lord Campbell's judgment in *Croft* v. *Lumley*[4] as follows: —

"There is an established maxim of law that, where money is paid, it is to be applied according to the expressed will of the payer, not of the receiver. If the party to whom the money is offered does not agree to apply it according to the expressed will of the party offering it, he must refuse it, and stand upon the rights which the law gives him. We see no reason why this maxim should not be applied to the transaction in question."

The cheques for the rent tendered by the defendants were received as rent tendered by them for their tenancy even if the plaintiffs chose in their receipts to resort to prevarication by making the receipts out in the name of Oh Hoon Tam.

I do not think I can usefully add to the multiplicity of authorities cited by counsel for the defence which I have considered and accept.

The plaintiffs' claim is accordingly dismissed with costs.

Claim dismissed.

Solicitors: *Cheng & Co.; Eugene Phoa & Co.*

HARBANS SINGH SIDHU v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) January 17, 1973]

[Singapore — Magistrate's Appeal No. 120 of 1972]

Penal Code, s. 500 — Defamation — Exceptions — Onus of proof that case falls under exceptions is on accused — Plea of justification — Good faith — Evidence Act (Cap. 5), s. 105.

Criminal Law and Procedure — Subpoena — Request for — Refusal by trial judge — Whether justifiable — Criminal Procedure Code (Cap. 113), s. 173(m).

This was an appeal against the conviction of the appellant for an offence of defamation under section 500 of the Penal Code. On appeal it was contended *inter alia* (1) that the learned trial judge had not directed his mind to the question whether the words alleged to be defamatory were true; (2) that the learned judge failed to direct his mind to the question whether or not the impugned words were spoken in good faith and (3) that the learned trial judge had exercised his discretion wrongly and acted contrary to section 173(m) of the Criminal Procedure Code in refusing the appellant's application to issue a *subpoena* to the Prime Minister of Singapore.

Held: (1) under section 105 of the Evidence Act if an accused claims the benefit of exceptions the burden of proving his plea that the case falls under any of the exceptions is on the accused. That burden is discharged if the accused person succeeds in proving a preponderence of probability. On the evidence on the plea of justification the appellant fell far short of discharging the onus on him;

(2) the finding of the learned trial judge that the impugned words were not spoken in good faith was amply supported by the evidence;

(3) on the evidence the application to *subpoena* the Prime Minister was vexatious and although the trial judge had not in his recorded reason for refusing the application complied with the exact terms of section 173(m) of the Criminal Procedure Code, that was no ground for vitiating the conviction, as there had been no failure or miscarriage of justice.

Case referred to:-

(1) *H. Singh* v. *State of Punjab* [1966] C.L.J. 82 at p. 88.

MAGISTRATE'S CRIMINAL APPEAL.

Mohamad Kamil Suhaimi for the appellant.

S. Rajendran (Deputy Public Prosecutor) for the respondent.

Wee Chong Jin C.J.: In this appeal the appellant, Harbans Singh Sidhu, challenges the correctness of his conviction for an offence under section 500 of the Penal Code and the sentence imposed on him. The criminal proceedings against the appellant were started on a complaint filed by the Attorney-General who in his complaint alleged that the appellant defamed Mr. Lee Kuan Yew, the Prime Minister, by spoken words . The alleged defamatory words, as set out in the charge against the appellant are these: —

"Coming to the so-called Prime Minister of Singapore Lee Kuan Yew, what type of man is he? I can tell you he is one of the biggest scoundrels in the world, not only in Singapore.

What did this scoundrel Lee Kuan Yew say in the Assembly?

Today the same scoundrel Lee Kuan Yew is doing worse than Lim Yew Hock.

What kind of a man is this scoundrel Lee Kuan Yew?

Now we complain about this scoundrel Lee Kuan Yew to the International Commission of Jurists on behalf of the political detainees in Singapore.

They wrote a letter to this scoundrel Lee Kuan Yew on the 23rd of July 1971.

Dear gangster of Singapore.

I called him in the Nomination day there a gangster and a kidnapper.

I would write dear No. 1 gangster of Singapore. Dear No. 1 public enemy of Singapore. Dear kidnapper No. 1 in Singapore.

This scoundrel Lee Kuan Yew has not yet replied to this letter.

I want to respect this scoundrel/gangster.

But I will not write with respect to this scoundrel.

This letter has not yet been replied by the scoundrel Lee Kuan Yew."

Section 499 of the Penal Code defines defamation in the following terms: —

"Whoever, by words either spoken or intended to be read, or by signs, or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person."

There can be no doubt at all and indeed it is not in dispute that the impugned words spoken by the appellant are *per se* defamatory and would harm the reputation of the Prime Minister. At the trial the appellant relied on the first, second, third, ninth and tenth Exceptions to section 499 of the Penal Code. It is therefore necessary to set out these Exceptions and they are in the following terms: —

"*First Exception.* — It is not defamation to impute anything which is true concerning any person, if it is for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception. — It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception. — It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Ninth Exception. — It is not defamation to make an imputation on the character of another, provided that the imputation is made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Tenth Exception. — It is not defamation to convey a caution, in good faith, to one person against another, provided that the caution is intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good."

After considering the evidence the trial judge came to the conclusion that the words spoken by the appellant were defamatory *per se* and held that the appellant had not brought himself within any of the Exceptions he relied on. In the result he convicted the appellant and sentenced him to six months' imprisonment.

Under section 105 of the Evidence Act, if an accused person claims the benefit of Exceptions, the